

Court of Appeals of the State of Georgia

ATLANTA, February 10, 2003

The Court of Appeals hereby passes the following order:

A03A0843. SECURITY LIFE INSURANCE COMPANY v. CLARK et al.

Appellees have moved this Court to dismiss this appeal as moot or, in the alternative, to substitute St. Paul Fire and Marine Insurance Company ("St. Paul") in lieu of Gordon B. Clark and Clarice J. Clark as appellees.

Appellees' motion to dismiss is denied. Security Life Insurance Company's ("Security") appeal is not moot even though co-defendant St. Paul, as surety on the supersedeas bond, paid the full amount of the judgment awarded to the Clarks, since St. Paul has demanded indemnification from Security, and a reversal of the judgment on the grounds urged by Security will reduce any potential obligation that Security may have to St. Paul to indemnify it for payment of the judgment. See *Johnson & Harber Constr. Co. v. Bing*, 220 Ga. App. 179 (469 SE2d 697) (1996) (appeal not moot even though co-defendant tortfeasor settled with plaintiff after the notice of appeal was filed, as the right of contribution still existed between the appellant and settling co-defendant); *Seaton v. Aetna Casualty & Surety Co.*, 189 Ga. App. 546, 547-548 (379 SE2d 712) (1988) (test of mootness is whether the appellant, in the case of reversal, could claim or enforce the rights insisted upon).

However, the Clarks have transferred and assigned the judgment appealed from and the fi. fa. issued thereon to St. Paul. Therefore, it is St. Paul, not the Clarks, who has the right to enforce that judgment and execution against Security. Therefore, St. Paul is substituted as the appellee, and the Clarks are dismissed as parties to this appeal.

The Reporter of Decisions is hereby directed to publish this order.

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LWPG&M LLP

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Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 10 2003

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Will. L. Martin, Clerk.